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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,203	01/02/2004	Frederic Sean Mersch	MER-0103	9971

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EXAMINER

AMERSON, LORI BAKER

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,203

Applicant(s)

MERSCH, FREDERIC SEAN

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 1, line 8, "MER-0103" should read --60/440,536--.

Appropriate correction is required.

Claim Objections

2. Claims are objected to because of the following informalities: Means for allowing a user to grip" should read --gripping means for allowing a user to grip--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- a. Claims 1 and 3-4, as broadly claimed, are rejected under 35 U.S.C. 102(b) as being anticipated by Ignaczak. Ignaczak discloses a push-up board exercise device having means for providing stability and connection (12) and means for allowing a user to grip (36) the device at the edge of middle and rigidly connected to the device (figs. 3a-3b). As to claims 3-4, the means for allowing is a rigid hand grip (22). The grip fits in hole (24) at lock point (38a,48a) to be rigidly secured to the board.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

b. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ignaczak as applied to claim 1 above, and further in view of Rozenblad. Ignaczak disclosed the means comprising a rigid slotted base (12). Ignaczak discloses all of the limitations of the claimed invention except for the base having a non-slip bottom. Thus Rozenblad teaches a non-slip bottom (50/52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ignaczak in view of the teaching of Rozenblad such that a non-slip bottom is capable of preventing the device from slipping while in use.

c. Claims 5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignaczak as applied to claim 1 above, and further in view of Rozenblad. Ignaczak discloses a base (12), and first (14) and second (16) grip. See the paragraph above for claims 1 and 2. Ignaczak discloses all of the limitations of the claimed invention except for the grips being small or large. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the

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art to modify the device of Ignaczak by designing a small or large grip because Applicant has not disclosed that a small or large grip provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any size grip because the size of the grip serves no mechanical function and is capable of performing in the same capacity as a small or large grip. Therefore, it would have been an obvious matter of design choice to modify Ignaczak to obtain the invention as specified in claim 5. As to claims 7-20, Ignaczak and Rozenblad disclose all of the limitations of the claimed invention except for a fourth, fifth, and sixth hand grip. The applicant should note that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

d. Claims 6 and 21, as broadly claimed, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ignaczak and Rozenblad as applied to claim 5 above, and further in view of Montgomery. Ignaczak and Rozenblad disclose all of the limitations of the claimed invention except for a third hand grip. Thus Montgomery teaches a third hand grip (22) rigidly connected to a middle of the board. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ignaczak in view of the teaching of Montgomery such that a third hand grip is capable of being gripped by a user.

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Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. And Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4971. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson